

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No. 14-06

**SANTA FE DISCOUNT CRUISE PARKING, INC. d/b/a EZ
CRUISE PARKING; LIGHTHOUSE PARKING, INC.; and
SYLVIA ROBLEDO d/b/a 81st DOLPHIN PARKING**

Complainants

v.

**THE BOARD OF TRUSTEES OF THE GALVESTON
WHARVES and THE GALVESTON PORT FACILITIES
CORPORATION**

Respondents

**RESPONDENTS' OPPOSED MOTION TO STRIKE COMPLAINANTS' RESPONSE TO
MOTION TO DISMISS BY THE BOARD OF TRUSTEES OF THE GALVESTON
WHARVES AND THE GALVESTON PORT FACILITIES CORPORATION**

COMES NOW, Respondents, The Board of Trustees of the Galveston Wharves ("Wharves") and the Galveston Port Facilities Corporation ("GPFC") (Wharves and GPFC sometimes collectively referenced as "Respondents") and asks the Commission to strike Complainants' Response to Motion to Dismiss by the Board of Trustees of the Galveston Wharves and the Galveston Port Facilities Corporation ("Response") as untimely filed. In support of said motion, Respondents would respectfully show the Commission as follows:

The Federal Maritime Commission's Rules of Practice and Procedure do not expressly provide for a motion to strike. Accordingly, under 46 C.F.R. 502.12, the Commission looks to

the Federal Rules of Civil Procedure (“FRCP”). Rule 12(f) of the FRCP governs motions to strike.

Federal Maritime Commission’s Rule of Practice and Procedure 46 C.F.R. 502.70 establishes the procedure for dispositive motions. Specifically, Section 502.70(b) states, “A response to a dispositive motion must be served within *15 days after the date of service* of the motion....” 46 C.F.R. 502.70(b) (emphasis added). Section 502.69(g) of the Rules defines a “dispositive motion” as “a motion for decision on the pleadings; motion for summary decision or partial summary decision; *motion to dismiss all or part of a proceeding* or a party to a proceeding; *motion for involuntary dismissal*; motion for initial decision on default; or any other motion for a final determination of all or part of a proceeding.” 46 C.F.R. 502.69(g) (Emphasis added).

Respondents filed their Motion to Dismiss on October 21, 2014. Said motion was served upon Complainants’ counsel via e-mail that same day.¹ Under the rules of this Commission, Complainants’ response to Respondents’ Motion to Dismiss was due no later than November 5, 2014. Complainants filed their Response on November 10, 2014, nearly one week after the applicable deadline. Complainants have not filed any motions requesting additional time for response under 46 C.F.R. 502.102, nor have they demonstrated any reasonable grounds for their failure to timely file their Response.

WHEREFORE, PREMISES CONSIDERED, Respondents pray that the Commission strike Complainants’ Response to Motion to Dismiss by the Board of Trustees of the Galveston Wharves and the Galveston Port Facilities Corporation as untimely filed.

Dated: November 13, 2014

¹ See Email to Gilman & Allison, attached herein as Exhibit A and fully incorporated by reference.

Respectfully submitted,

McLeod, Alexander, Power & Appfel, P.C.

By: 

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ATTORNEYS FOR THE BOARD OF TRUSTEES
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CERTIFICATE OF CONFERENCE

On November 12, 2014, Respondents' counsel contacted Douglas T. Gilman, counsel for Complainants, regarding the subject matter of this motion. Mr. Gilman expressed that he opposed Respondents' motion and the relief requested herein.

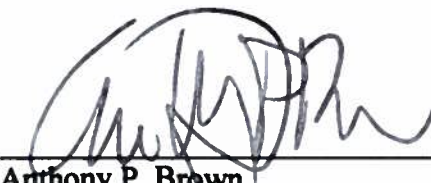


Amanda D. Wright

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of November, 2014, a copy of the foregoing document was served by electronic mail on Complainants' counsel of record.

Douglas T. Gilman
Gilman & Allison, LLP
2005 Cullen Blvd.
Pearland, Texas 77581



Anthony P. Brown

From: Rachell Smith
To: "rdgilman@gilmanallison.com"; "ballison@gilmanallison.com"
Cc: [Hulse Wagner; Anthony Brown](#)
Subject: FW: Docket No. 14-06; SANTA FE DISCOUNT CRUISE PARKING, INC. D/B/A EZ CRUISE PARKING; LIGHTHOUSE PARKING, INC. AND SYLVIA ROBLEDO D/B/A 81ST DOLPHIN PARKING VS THE BOARD OF TRUSTEES OF THE GALVESTON WHARVES AND THE GALVESTON PORT FACILITIES CORPORATION
Date: Tuesday, October 21, 2014 1:57:00 PM
Attachments: [Letter to Secretary 10-21-14.PDF](#)
[Respondents' Motion to Dismiss.PDF](#)
[Request for Hearing.PDF](#)

Gentlemen, attached please find true and correct copies of the Filing Letter, Respondents' Motion to Dismiss and Request for Hearing re: Respondents' Motion to Dismiss which were emailed to the Secretary of Federal Maritime Commission.

I've placed copies in the mail for you via certified mail return receipt requested.

Thank you,

Rachell Smith
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& Chris C. King
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Exhibit A